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6 Attorney for Lenders Protection Group and
7 Donna Cangelosi

8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF NEVADA

10 —ooOoo—

11 In Re:
12 USA COMMERCIAL MORTGAGE
COMPANY,
13 Debtor.

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

14 In Re:
15 USA CAPITAL REALTY ADVISORS,
LLC,
16 Debtor.

JOINTLY ADMINISTERED
Chapter 11

17 In Re:
18 USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,
19 Debtor.

**DECLARATION OF ROBERT BENDER
IN SUPPORT OF OPPOSITION TO
EMERGENCY MOTION OF
COMPASS FINANCIAL PARTNERS
LLC FOR ORDER PURSUANT TO 11
USC §§ 105 AND 1141 ENFORCING
CONFIRMATION ORDER AND FOR
CIVIL CONTEMPT SANCTIONS**

20 In re:
21 USA CAPITAL FIRST TRUST DEED
FUND, LLC,
22 Debtor.

Hearing Date: May 31, 2007
Hearing Time: 2:30 p.m.

23 In re:
24 USA SECURITIES, LLC,
25 Debtor.

26 Affects:
27 ☐ All Debtors
28 ☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

1 I, ROBERT BENDER, being first duly sworn, do depose and say under the penalty of
2 perjury:

3 1. I am an investor in certain loans brokered by USA Commercial Mortgage Company,
4 including the loan commonly known as the Standard Property Loan. I have a \$250,000 principal
5 investment in the Standard Property Loan, which at all times relevant hereto had a total outstanding
6 principal balance of \$9,640,000.

7 2. I have knowledge of and am competent to testify to the matters stated herein, except
8 for those matters stated on information and belief and as to those matters I believe them to be true.

9 3. I am informed and believe that prior to Compass Partners taking over as loan
10 servicer, Spencer Judd, attorney for direct lenders in the Standard Property Loan, was in negotiations
11 with the Standard Property borrower for repayment of the Standard Property Loan. In this regard,
12 I was informed by Mr. Judd that Standard Property was willing to offer to pay direct lenders 100%
13 of their principal investment (i.e. \$9,640,000) in full satisfaction of the Loan.

14 4. Thereafter, but prior to Compass taking over as servicer, I contacted Mr. George
15 Venturela, the borrower on the Standard Property Loan, who informed me that he was negotiating
16 with Compass, not USACM, regarding an offer to payoff the loan.

17 5. On or about February 2, 2007, Compass sent a letter to direct lenders, which sought
18 investors' approval to accept 90% of their principal investment in full satisfaction of the Standard
19 Property Loan, a copy of which is attached as Exhibit A. This letter greatly concerned me because
20 I knew the borrower was willing to pay 100% of principal based upon information provided by our
21 counsel.

22 6. In response to the February 2, 2007, letter from Compass, I and other direct lenders
23 rejected the 90% payoff communicated by Compass. In this regard, I am informed and believe that
24 Counsel for direct lenders in the Standard Property Loan sent a letter to Compass demanding that
25 Compass accept the payoff of 100% and waive all other accrued interest and fees. In addition, I am
26 informed and believed that letter informed Compass that they would be terminated if such an offer
27 was not accepted.

28 7. Thereafter, on or about March 7, 2007, Compass sent a letter to all direct lenders in

1 the Standard Property Loan, a copy of which is attached as Exhibit B. In this letter, Compass sought
 2 the approval of 100% of the direct lenders in the Standard Property Loan of an agreement Compass
 3 reached with Standard Property to pay off the Standard Property Loan. According to that letter, the
 4 terms of the payoff were:

5 i. The Direct Lenders in the loan receive 100% of their unpaid Standard
 6 Property Principal Balance; and

7 ii. The Direct Lenders do not receive any accrued interest.

8 8. In reliance on the representations of Compass, I and other direct lenders constituting
 9 100% of the beneficial interest in the Standard Property Loan approved the payoff in accordance with
 10 the specific terms of the March 7, 2007.

11 9. I am informed and believed that on or about March 13, 2007, Compass issued a
 12 Payoff Statement to Standard Property (the "Standard Property Payoff Statement"), a copy of which
 13 is attached as Exhibit C. The Standard Property Payoff Statement directs Standard Property to make
 14 a payoff, as of March 15, 2007, in the amount of \$10,499,068 with a per diem interest accrual of
 15 \$2,205.74 for every day after March 15, 2007. The \$10,499,068.15 payoff consisted of:

16 i. Standard Property Principal Balance: \$9,640,000.00

17 ii. Late Fees: \$ 47,694.43

18 iii. Other Fees: \$ 267,164.11

19 iv. Default Interest \$ 544,509.60

20 10. The Standard Property Payoff Statement revealed that the borrower had agreed to pay
 21 significantly more than just 100% of the \$9,640,000 principal loan balance. It revealed Compass had
 22 a secret agreement with Standard Property, undisclosed to the Standard Property Loan Direct
 23 Lenders, whereby Compass received Late Fees, Other Fees and Default Interest from Standard
 24 Property, without collecting accrued contractual interest owed to the Direct Lenders.

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11. On or about March 15, 2007, Standard Property paid off the Standard Property Loan pursuant to the terms of the Standard Property Payoff Statement. At the time the Standard Loan was paid off, Compass did not pay the Standard Property Loan direct lenders any of the accrued interest they were owed. I have since been informed that Compass took the available funds to pay themselves default interest, late fees and other fees totaling \$859,368.14.

I hereby swear under penalty of perjury that the assertions of this Declaration are true.

DATED: May 30, 2007

/s/ Robert Bender
Robert Bender